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United States District Court  
Northern District of California

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ANTHONY MILANO,  
  
Defendant.

Case No.: CR 13-00366-JSW (KAW)  
  
DETENTION ORDER

**I. BACKGROUND INFORMATION**

Defendant Anthony John Milano is charged in an indictment with a violation of 18 U.S.C. § 922(g)(1) (Felon in Possession of a Firearm).

Defendant initially appeared before the undersigned on July 11, 2013, and was charged with the instant offense. On that date, Defendant was remanded to custody pending a detention hearing scheduled for July 18, 2013. Pretrial Services prepared a full bail study and recommended that Defendant be detained. On July 18, 2013, the Court conducted the detention hearing. Defendant was present, in custody, and represented by Ellen Leonida of the Federal Public Defender's Office. Assistant United States Attorney Cynthia Frey appeared on behalf of the Government. For the reasons stated below, the Court orders that Defendant be detained.

**II. LEGAL ANALYSIS**

The Bail Reform Act requires that in a pretrial posture, the government bears the burden of proving that a defendant poses a risk of flight and/or a danger to the community that cannot be mitigated through the imposition of conditions of release. If the government does not meet its burden, the court's duty is to fashion appropriate conditions that permit the defendant to remain out of custody during the preparation of his or her defense, while safeguarding against flight or danger to the community. Close cases should result in release: "[t]o give effect to the principle

1 that doubts regarding the propriety of release be resolved in favor of the defendant, the court is to  
2 rule against detention in close cases.” *United States v. Chen*, 820 F. Supp. 1205, 1208 (N.D. Cal.  
3 1992) (Walker, J.) (citing *United States v. Motamedi*, 767 F.2d 1403, 1405-06 (9th Cir. 1985)).

4 A person facing trial generally shall be released if some “condition, or combination of  
5 conditions . . . [can] reasonably assure the appearance of the person as required and the safety of  
6 any other person and the community.” 18 U.S.C. § 3142(c). In non-capital cases, pretrial release  
7 should be denied “[o]nly in rare circumstances.” *Motamedi*, 767 F.2d at 1405; *see also United*  
8 *States v. Salerno*, 481 U.S. 739, 755 (1987) (upholding constitutionality of Bail Reform Act; “[i]n  
9 our society liberty is the norm, and detention prior to trial or without trial is the carefully limited  
10 exception”). Bail hearings generally proceed by proffer, and the rules of evidence do not apply.  
11 18 U.S.C. § 3142(f). At the hearing, the court determines whether any conditions in section  
12 3142(c) will reasonably assure the defendant’s appearance and the safety of the community or  
13 another person. *Id.* The Bail Reform Act “mandates release of a person facing trial under the  
14 least restrictive condition or combination of conditions that will reasonably assure the appearance  
15 of the person as required.” *Motamedi*, 767 F.2d at 1405.

16 In evaluating whether pretrial release is appropriate, a court must consider (1) the nature  
17 and circumstances of the offense, (2) the weight of the evidence, (3) the history and  
18 characteristics of the person (including his character, physical and mental condition, family ties,  
19 employment, financial resources, length of residence in the community, community ties, past  
20 conduct, history relating to drug and alcohol abuse, criminal history, or record concerning  
21 appearance at court proceedings), and (4) the nature and seriousness of the danger to any person  
22 or the community posed by the person’s release. 18 U.S.C. § 3142(g); *Motamedi*, 767 F.2d at  
23 1407.

24 **A. The Nature and Circumstances of the Offense and Weight of the Evidence**

25 The indictment alleges that on or about March 21, 2013, the Defendant, having been  
26 previously convicted of a crime punishable by a term of imprisonment exceeding one year,  
27 unlawfully and knowingly possessed a firearm and ammunition, specifically, a Ruger LCR 38  
28 Special, serial number 54066062, and five rounds of .38 caliber Special GFL ammunition, five

1 rounds of .38 caliber Special R-P ammunition, one round of .38 caliber Special Federal  
2 ammunition, two rounds of .45 caliber Winchester Auto ammunition, and one round of 9mm  
3 Lugar RP ammunition, in and affecting interstate commerce, in violation of 18 U.S.C. §  
4 922(g)(1). The Defendant is charged with a serious offense, involving both a substantial amount  
5 of a controlled substance, paraphernalia used to intravenously inject and smoke drugs, and a fully  
6 loaded firearm that was reported stolen.

7 At the hearing, the Government proffered that while performing a probation search at  
8 Defendant's mother's house, officers found 45 methadone pills<sup>1</sup>, syringes, a meth pipe, a fully  
9 loaded 38, and a magazine for a Glock. The firearm was reported stolen from Danville. The  
10 firearm had 14 rounds of ammunition. The Defendant had \$700 on his person even though the  
11 Defendant had not been gainfully employed in two years. The Defendant was with his significant  
12 other, Kellie Marshall, at the time of the arrest.

13 Defendant's possession of a loaded firearm suggests that he may have a propensity to be  
14 violent and pose a danger to the community. Therefore, the nature and circumstances of this  
15 offense weigh in favor of detention.

16 The loaded firearm, drugs, and paraphernalia were all found in Defendant's bedroom.  
17 Defendant's significant other reported that she and the Defendant were the only two people who  
18 stayed in the bedroom. Accordingly, the weight of the evidence weighs in favor of detention.

19 **B. The History and Characteristics of the Defendant and the Nature and Seriousness of**  
20 **the Danger to Any Person or the Community**

21 Defendant is 27 years old. He was residing with both of his parents for a year in Antioch,  
22 California, prior to his incarceration. He has resided at his parents' residence intermittently his  
23 entire life. The Defendant's mother, Ms. Milano, stated that Defendant moved out of her residence  
24 in Antioch, California, two weeks prior to his arrest, to go live with his friend.

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<sup>1</sup> Although the Government stated that the Defendant was in possession of 45 methadone pills at the time of the arrest, Pretrial Services reported that according to Special Agent Mario Huelga of the Department of Homeland Security (DHS), there were approximately 400 pills of methadone found, along with syringes, firearms, and ammunition.

1 Defendant has three siblings, one residing in New York and the other two in Merced,  
2 California. The Defendant has never been married, but he has been in a relationship with Kellie  
3 Marshall for one year. The Defendant has no children.

4 Defendant obtained his high school diploma from Pittsburg Adult School in 2008.  
5 Defendant stated he is financially supported by his parents; however, his mother reported that the  
6 Defendant supported himself financially. She reported that the Defendant was buying and selling  
7 gold and "other stuff" for a living. The Defendant stated he has been unemployed for two years;  
8 however, he has sporadically helped his father with land survey work. Defendant has worked as a  
9 land surveyor for his father's company, Terra Firma in Antioch, California, from 2004 to 2011.  
10 Defendant has also worked as a laborer for Top Shelf in Brentwood, California, from 2003 to  
11 2004 and as a kitchen worker for Aladino's Pizza, in Antioch, California from 2000 to 2003.

12 Defendant has travelled internationally to Italy and other Western European countries for  
13 one month in 2002; Mexico for one week in 2003; and Italy with his parents for three weeks in  
14 2005. Ms. Milano reported that she has possession of Defendant's expired passport.

15 Defendant does not suffer from any history of mental health conditions and has never  
16 received any mental health treatment. Defendant reported he has consumed alcohol socially since  
17 he first tried it at the age of 17. The Defendant reported he experimented with marijuana and  
18 cocaine while in high school. He also stated he was prescribed Norco for one year after a  
19 snowboarding accident in 2003, and he started taking non-prescribed pills such as Methadone and  
20 Oxycodone in 2011, with his last time being eight months ago. The Defendant reported he has  
21 never received any substance abuse treatment, but he is open to receiving treatment. Defendant's  
22 mother indicated that Defendant voluntarily checked himself in at Teen Challenge for substance  
23 abuse treatment, six to seven years ago. She stated he irregularly attended the program for six  
24 months.

25 Officer Tina Martinez of the Contra Costa County Probation Department reported  
26 Defendant has a total of three probation revocations since he initially started his period of  
27 probation with the county on March 27, 2012. Officer Martinez stated the probation violations  
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1 were, for Defendant's drug use and failure to stay in contact with his probation officer; failure to  
2 stay in contact with his probation officer; and arrest for possession of drug paraphernalia.

3 Defendant's criminal history suggests that the Defendant is not amenable to supervision as  
4 he has repeatedly violated his probation with crimes similar to the one at issue. In 2009,  
5 Defendant was convicted of a misdemeanor for theft and sentenced to six days in jail. In January  
6 2011, Defendant was convicted of Possession of a Controlled Substance While Armed and  
7 sentenced to 120 days in jail with three years of probation. Just seven months later, Defendant  
8 violated his probation when he was convicted of Possession of Drugs and Possession of  
9 Methamphetamine. He was sentenced to three years of probation and 24 days in jail. Defendant  
10 was on probation when he allegedly committed the instant offense.

### 11 **C. Risk of Nonappearance**

12 Defendant offered his mother, grandmother, and significant other as proposed sureties.  
13 Defendant's mother, Lisa Milano, is willing to assist the Defendant with bail by cosigning an  
14 unsecured appearance bond as she does not have any cash or property to post. Ms. Milano has  
15 been employed as a part-time sales clerk with a jewelry store for over three years and earns a  
16 monthly income of approximately \$700. Ms. Milano was unwilling to allow Defendant to live  
17 with her and unwilling to serve as a third party custodian. She also wanted to keep her current  
18 address private because some of Defendant's acquaintances broke into her previous residence and  
19 stole some of her property. At the hearing, however, she clarified that she loves and supports  
20 Defendant.

21 Defendant's grandmother, Antoinette Daniele, is willing to cosign an unsecured  
22 appearance bond and she is willing to serve as a third party custodian. However, she is unable to  
23 allow the Defendant to reside at her current residence as it is in short sale status, and she will be  
24 moving to another residence in the near future. Ms. Daniele stated she has an IRA account worth  
25 approximately \$148,000; however, she is unwilling to post that amount of money. She is living  
26 with the following monthly sources of income: \$850 payments from her IRA account;  
27 approximately \$1,200 in a social security; and \$350 in employment income.  
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1 Defendant's significant other, Kellie Marshall, is willing to assist the Defendant with bail  
2 by cosigning an unsecured appearance bond, and she is willing to post \$600 to \$700 in cash. She  
3 is also willing to serve as a third party custodian. Ms. Marshall indicated she has been in a  
4 relationship with Defendant for 14 months but has known him for years. Ms. Marshall is currently  
5 employed as a part-time tutor and earns approximately \$600 per month during the school year and  
6 \$1,200 during the summer. She is currently pursuing a degree in Biology at the University of  
7 California, Davis. Ms. Marshall was at the residence where the Defendant was arrested for the  
8 instant offense. The police report stated that Ms. Marshall was in the same bedroom where there  
9 were syringes, drugs, and firearms allegedly found by the police officer who searched the house.  
10 She was arrested and cited for Use/Under the Influence of a Controlled Substance. Because she  
11 has allegedly been involved in criminal activity with Defendant and was with Defendant at the  
12 time of the instant offense, the Court finds that she is not a suitable surety.

13 Factors that suggest the Defendant may pose a danger to the community include the  
14 violent nature of the instant offense— felon in possession of a stolen firearm—and Defendant's  
15 prior theft, weapons, and drug-related arrests and convictions. Additionally, Defendant has a  
16 history of substance abuse. He has no viable place to live and no viable third-party custodian. In  
17 addition, Defendant has violated his probation on three occasions, showing that he is not  
18 amenable to community supervision. Accordingly, the Court finds that Defendant poses a risk of  
19 danger to the community that cannot presently be mitigated through the imposition of conditions  
20 of release.

21 Factors that indicate Defendant poses a risk of flight include: his lack of stable residential  
22 history; his previous international travel; his apparent lack of employment; his failure to stay in  
23 contact with his probation officer; and his admitted substance abuse history. Also, DMV records  
24 reflect that the Defendant's driver's license is currently suspended because of a Failure to  
25 Appear/Pay Fine in court. Mitigating factors include Defendant's lengthy history of residence in  
26 this District; his familial ties to this District; and his lack of any mental health issues. The Court  
27 finds that because Defendant would not have a viable place to live or custodian if he was released,  
28 the risk of flight cannot presently be mitigated through the imposition of conditions of release.

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